

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 727 OF 2007

Haresh Parmanand Jashanani & ors.... Petitioner

versus

Ichalkaranji Janata
Sahakari Bank and ors. Respondent.

Shri P.S.Dani i/b. M/s. Kiran Jain & Co. for the
petitioner

Shri A.S. Desai for Respondent no.1.

Shri K.T.Kukreja i/b M/s. Kukreja & Co. for the
respondents 3 and 4.

Ms. D.S.Mhaispurkar AGP for Respondent no.5.

CORAM; A.P. DESHPANDE, J.
DATED; 9TH JULY, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up
for final hearing by consent of parties.

2. The respondent no.1 bank had advanced financial
assistance to the respondent no. 2 by extending cash
credit facility but respondent no.2 failed to repay
the amount. Present petitioner nos.1 and 2 are
admittedly the directors of the company, whereas
according to respondent no.1 bank, petitioner no.3 is
a surety who has guaranteed repayment of the amount.
The respondent no.1 instituted a suit in the
Co-operative Court claiming a sum of about Rs. 35

lacs. The bank moved an application seeking to restrain the petitioners from creating any third party interest in the property, and restraining the defendants from alienating the said properties. Besides claiming injunction, the bank also claimed attachment of the properties before judgment. The trial court did not grant the prayer for attachment before judgment. However granted injunction as prayed for restraining the defendants from creating third party interest and/or from alienating the suit property.

3. Aggrieved by the order passed by the co-operative court, an appeal was carried before the Co-operative Appellate court by the bank against the order passed by the co-operative court to the extent it rejected the prayer for attachment before judgment. The first appellate court has allowed the A.O. and granted the relief prayed for by the bank, by directing the attachment before judgment. With a view to make out a case, that the petitioners are likely to dispose of the property and move out of India, it was brought on record of the appellate court that a red corner notice was also issued by the International police against the present petitioners. The same was brought on record with a view to substantiate the claim of the bank that there is reasonable apprehension in the mind

of the Bank that the present petitioners with a view to avoid the decree might leave the territory of India. It is one of the ground as to why the first appellate court has directed attachment before judgment.

4. The learned counsel for the petitioner has contended that the present petitioners are mainly concerned about the property at Schedule 'D' at Exh.I which is a flat No. 12-A admeasuring 2000 sq.ft. Cenced Apartment, Pali Hill Road, Khar west. In regard to this property the learned counsel submits that the property originally stood in the name of the father and mother of the present petitioner nos.1 and 2 and by executing a will, they have bequathed the said flat in favour of their grant children i.e. children of petitioner nos. 1 and 2. The learned counsel for the petitioner has invited my attention to the discussion in that regard in the order passed by the appellate court. The first appellate court has rejected the submission of the present petitioners that the property has been bequathed in favour of the grant children, on account of absence of will being probated. Declining to consider the plea of execution of the will, the court has held that the petitioner nos.1 and 2 are the legal heirs of the property. The learned counsel for the petitioner has placed on

record copies of both the probates, one executed by the father of the petitioner nos. 1 and 2 and the other by mother of petitioner nos.1 and 2, issued under section 307. Copies of probates are taken on record. I am not interfering with the order passed by the first appellate court to the extent it relates to property at schedule 'A', 'B', 'C' and 'E'. However to the extent the order relates to the property covered by Schedule 'D'. I grant liberty to the petitioners to move an appropriate application before the first appellate court along with copies of the probate and seek modification of the impugned order before the appellate court in view of occurrence of subsequent event i.e. obtaining Probate. The learned counsel for the respondent no.1 bank has no objection for adopting this course of action. It is made clear that the order of attachment even in regard to the property at schedule 'D', shall continue to operate till the final decision of the application to be moved by the petitioner seeking modification of the order. Writ petition is thus disposed of. Rule made absolute in the above terms with no order as to costs.

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